

<b>TO:</b> Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following  Patents or  Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
C-08-2973-BZ	June 16, 2008	Office of the Clerk, 450 Golden Gate Ave., 16 <sup>th</sup> Floor, San Francisco, CA 94102
PLAINTIFF		DEFENDANT
UNIVERSITY OF PITTSBURGH OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION		VARIAN MEDICAL SYSTEMS, INC.
PATENT OR TRADEMARK NO.      DATE OF PATENT OR TRADEMARK      HOLDER OF PATENT OR TRADEMARK		
1 <i>5,727,554</i>		
2 <i>5,784,431</i>		"Pls. See Attached Copy of Complaint"
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In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
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CLERK	(BY) DEPUTY CLERK	DATE
Richard W. Wieking	Thelma Nudo	June 16, 2008

Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

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ORIGINAL FILED

JUN 16 2008

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

6 Attorneys for Plaintiff  
7 UNIVERSITY OF PITTSBURGH

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

BZ

10  
11 UNIVERSITY OF PITTSBURGH OF THE COMMONWEALTH SYSTEM OF  
12 HIGHER EDUCATION d/b/a UNIVERSITY OF PITTSBURGH,  
13 a Pennsylvania non-profit corporation (educational),

Case No.

3973

COMPLAINT FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

14 Plaintiff,

15 v.

16 VARIAN MEDICAL SYSTEMS, INC.,  
17 a Delaware corporation,

18 Defendant.

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1 Plaintiff UNIVERSITY OF PITTSBURGH OF THE COMMONWEALTH SYSTEM OF  
2 HIGHER EDUCATION d/b/a UNIVERSITY OF PITTSBURGH ("UPitt" or "University of  
3 Pittsburgh") for its complaint against defendant VARIAN MEDICAL SYSTEMS, INC.  
4 ("Varian" or "Defendant") alleges as follows:

5 **PARTIES**

6 1. Plaintiff UPitt is a non-profit corporation with its principal place of business at  
7 4200 Fifth Ave, Pittsburgh, Pennsylvania 15260.

8 2. UPitt was founded in 1787 as a small, private school, known as the Pittsburgh  
9 Academy, which was located in a log cabin near Pittsburgh's three rivers. In the 220 years since,  
10 the University of Pittsburgh has evolved into an internationally recognized center of learning and  
11 research. One such area of recognized research relates to medical use of radiation for treatment  
12 and diagnosis. The University of Pittsburgh owns valuable intellectual property rights in this and  
13 other technology areas.

14 3. On information and belief, defendant Varian is a Delaware corporation with its  
15 principal place of business at 3100 Hansen Way, Palo Alto, California 94304-1030.

16 4. On information and belief, Varian manufactures, sells and services equipment and  
17 software for the medical use of radiation for treatment and diagnosis.

18 **JURISDICTION AND VENUE**

19 5. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et*  
20 *seq.*, for infringement by Varian of patents owned by UPitt. This Court has jurisdiction over the  
21 subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

22 6. This Court has personal jurisdiction over Varian because Varian does business in  
23 California and has sufficient contacts with the State of California to satisfy both the requirements  
24 of due process and Rule 4(k)(2) of the Federal Rules of Civil Procedure.

25 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) & (c) and  
26 1400(b).

## **INTRADISTRICT ASSIGNMENT**

8. Pursuant to Civil L.R. 3-2(c), this action for patent infringement is subject to assignment on a district-wide basis.

## **COUNT ONE**

**(Infringement of U.S. Patent No. 5,727,554 by Varian)**

9. UPitt re-alleges and incorporates by reference the allegations stated in paragraphs 1 through 8.

10. Pursuant to the assignments attached as Exhibits 1 and 2, UPitt is the owner of United States Patent No. 5,727,554 (the 554 Patent), entitled "Apparatus Responsive to Movement of a Patient During Treatment/Diagnosis." The 554 Patent was duly and legally issued by the Patent and Trademark Office on March 17, 1998. A true and correct copy of the 554 Patent is attached as Exhibit 3.

11. Varian has infringed and continues to infringe the 554 Patent by importing, making, using, offering for sale and/or selling products, in the United States that embody or otherwise practice one or more of the claims of the 554 Patent, or by otherwise contributing to infringement or inducing others to infringe the 554 Patent.

12. On information and belief, Varian's infringement has been with full knowledge of the 554 Patent and willful; thus, this is an exceptional case under 35 U.S.C. § 285, and UPitt is accordingly entitled to an award of its attorneys' fees.

13. Varian's infringement has injured and damaged UPitt. The University of Pittsburgh is entitled to recover damages adequate to compensate UPitt for Varian's infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty, together with interest and costs.

## COUNT TWO

**(Infringement of U.S. Patent No. 5,784,431 by Varian)**

14. UPitt re-alleges and incorporates by reference the allegations stated in paragraphs 1 through 13.

15. Pursuant to the assignments attached as Exhibits 1 and 4, UPitt is the owner of United States Patent No. 5,784,431 (the 431 Patent), entitled "Apparatus for Matching X-Ray Images with Reference Images." The 431 Patent was duly and legally issued by the Patent and Trademark Office on July 21, 1998. A true and correct copy of the 431 Patent is attached as Exhibit 5.

16. Varian has infringed and continues to infringe the 431 Patent by importing, making, using, offering for sale and/or selling products, in the United States that embody or otherwise practice one or more of the claims of the 431 Patent, or by otherwise contributing to infringement or inducing others to infringe the 431 Patent.

17. On information and belief, Varian's infringement has been with full knowledge of the 431 Patent and willful; thus, this is an exceptional case under 35 U.S.C. § 285, and UPitt is accordingly entitled to an award of its attorneys' fees.

18. Varian's infringement has injured and damaged UPitt. The University of Pittsburgh is entitled to recover damages adequate to compensate UPitt for Varian's infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty, together with interest and costs.

## **PRAYER FOR RELIEF**

WHEREFORE, UPitt requests that the Court enter judgment in favor of UPitt and against Varian as follows:

(a) adjudicating and declaring that Varian has infringed, contributorily infringed, and actively induced others to infringe the 554 and 431 Patents;

(b) awarding UPitt damages in an amount sufficient to compensate UPitt for Varian's infringement, contributory infringement, and active inducement of others' infringement of the 554 and 431 Patents, but not less than a reasonable royalty;

(c) awarding pre-judgment interest, costs, and expenses to UPitt pursuant to 35 U.S.C. § 284;

- (d) awarding increased damages, pursuant to 35 U.S.C. § 284, by reason of Varian's willful infringement of the 554 and 431 Patents;
- (e) declaring this case exceptional under 35 U.S.C. § 285 and awarding UPitt its reasonable attorney fees, expenses, and costs incurred; and
- (f) granting UPitt such other and further relief as this Court may deem just and proper, or that UPitt may be entitled to as a matter of law or equity.

Dated: June 16, 2008

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By Daniel Johnson  
Daniel Johnson, Jr.  
(State Bar No. 57409)

Attorneys for Plaintiff  
UNIVERSITY OF PITTSBURGH

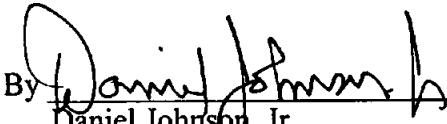
1                           **DEMAND FOR JURY TRIAL**

2                           UPitt hereby requests a trial by jury.

3                           Dated: June 16, 2008

4                           Respectfully submitted,

5                           MORGAN, LEWIS & BOCKIUS LLP

6                           By   
7                           Daniel Johnson, Jr.  
8                           (State Bar No. 57409)

9                           Attorneys for Plaintiff  
10                          UNIVERSITY OF PITTSBURGH